

In re) Fair Hearing No. V-06/08-282
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 Appeal of)

The petitioner appeals the decision by the Department of Children and Families, Health Access Eligibility Unit that he and his wife are no longer eligible for VPharm benefits. The issue is whether the petitioner's income from self-employment exceeds the maximum allowable under that program.

1. The petitioner lives with his wife and is self employed. He reports his income to the Department based on his annual federal tax returns. In a decision dated May 30, 2008, the Department notified the petitioner that his VPharm benefits would close effective July 1, 2008 due to excess income, as determined from the petitioner's 2007 tax returns.

2. The dispute in this matter concerns the treatment under the regulations of "depreciation" as reported on the petitioner's tax return. At the hearing in the matter, held by phone on July 17, 2008, the petitioner (whose tax preparer was also present) did not contest the Department's

determination that the household's 2007 income without a deduction for depreciation was \$3,010.68, which is over the VPharm maximum of \$2,635 for a family of two. It appears that if the amount claimed by the petitioner as a deduction for depreciation on his tax return was allowed, his income would be below the maximum.

3. At the hearing the petitioner also alleged that his income had decreased during the first six months of 2008. The petitioner was advised that he could reapply for VPharm based on this change in circumstances.

ORDER

The Department's decision is affirmed.

REASONS

Income eligibility for VPharm is determined based on all earned and unearned income in the household. Id. § 4001.81. Only defined "business expenses" are deducted from gross income from self employment. W.A.M. § 4001.81(c). Under § 4001.81(d), those expenses are "limited to operating costs necessary to produce cash receipts". That section further specifies that: "Items such as . . . depreciation . . . are not allowable business expenses".

Inasmuch as there is no dispute that the Department correctly determined the petitioner's income, and that its decision was in accord with the above regulations, the Board is bound to affirm that decision. 3 V.S.A. § 3091(d), Fair Hearing Rule No. 17.

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